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**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: *[Signature]* Stephen P. Lee, Deputy County Attorney

FROM: Lynn Vouis, Assistant County Attorney *[Signature]*

CONCUR: Pam Hastings, *[Signature]* Administrative Manager/Public Works Department
 Kathleen Myer, Principal Engineer/Major Projects *[Signature]*

DATE: December 20, 2004

SUBJECT: Purchase Agreement Authorization
 Owner: Bich Development Partners, LLC
 Parcel I.D. No.: 21-21-30-512-0000-0080
 Kewanee Trail; Recreational Trail Easement

This memorandum requests authorization by the Board of County Commissioners (BCC) and execution by the Chairman of a purchase agreement for Parcel I.D. No. 21-21-30-512-0000-0080. The parcel is required for the recreational trail easement for the Kewanee Trail improvement project. The purchase price is \$22,000.00, inclusive of attorney fees and expert costs incurred by the property owners.

I THE PROPERTY

A. Location Data

The west side of SR 436± north of Cassel Creek Boulevard in Seminole County, Florida

1. Location Map (Exhibit A);
2. Sketch (Exhibit B); and
3. Purchase Agreement (Exhibit C)

B. Address

N/A

C. Description

The parent tract property contains 84,000 square feet, and is vacant commercial property.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2004-R-101 on May 25, 2004, authorizing the acquisition of the referenced property, and finding that the development of the Kewanee Trail is necessary and serve a county and public purpose and is in the best interests of the citizens of Seminole County.

III ACQUISITION/REMAINDER

The parent tract contains a total of 84,000 square feet. The proposed easement is a rectangular shaped 60 foot wide recreational trail easement containing 8,700 square feet.

IV APPRAISED VALUE

The County's appraised value amount as of April 1, 2004 was \$12,800.00. The County's appraisal was prepared by Diversified Property Specialists, Inc., and was approved by the County's MAI designated staff appraiser.

V BINDING OFFER/NEGOTIATIONS

On September 14, 2004, the BCC authorized a binding written offer in the amount of \$15,000.00. Thereafter, County staff negotiated this contingent settlement agreement with the property owners and their attorney in the amount of \$22,000.00, inclusive of fees and costs incurred.

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

The partners in the development company that holds title to the property to be acquired are very knowledgeable of the real estate market in the area and presented the argument that the value of the easement to be acquired was much higher than the County's appraised value. Their assertion was based on the opinions of their in-house appraiser and land planner, who evaluated the County's appraisal. The property owners insisted on \$22,000.00 for the land value, the County agreed if it included the costs of the attorney, appraiser and land planner who worked on behalf of the property owner. This proposed settlement amount, although \$7,000.00 more than the County's binding written offer and \$9,200.00 more than the County's appraised value amount, is reasonable under the circumstances inherent in the condemnation process. If this property proceeds to condemnation, litigation costs and costs to update appraisals on both sides will have to be paid by the County. These costs would easily exceed the \$7,000.00 in additional settlement funds proposed to be paid.

VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$22,000.00, inclusive of fees, costs and expenses incurred.

LV/kc

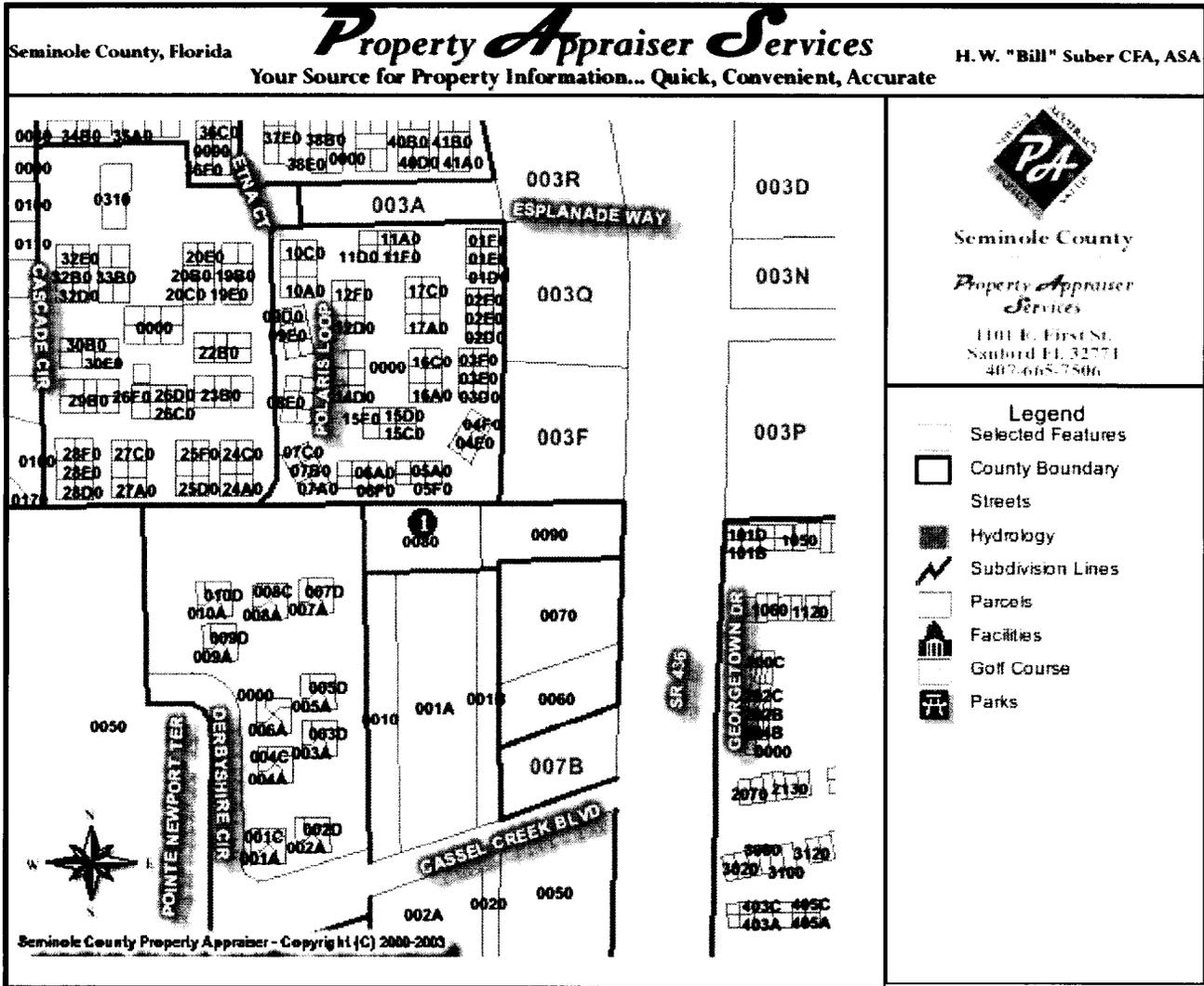
Attachments:

Location Map (Exhibit A)

Sketch (Exhibit B)

Purchase Agreement (Exhibit C)

P:\USERS\LV\OUI\SETTLEMENT MEMO\KEWANEE TRAIL\AGENDA ITEM BICH DEVELOPMENT PARTNERS LLC.DOC

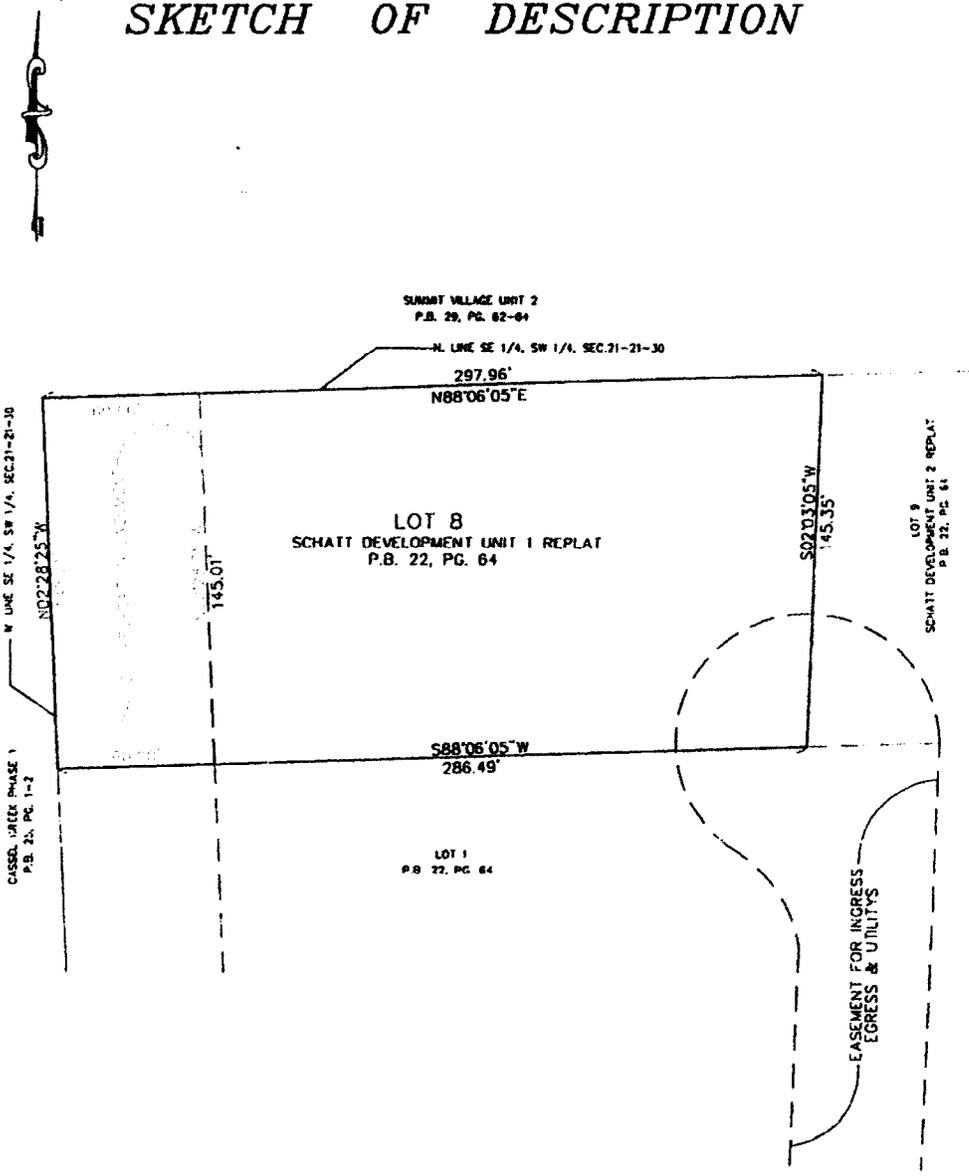


| Rec | Parcel | Owner | Owner Addr | City | State | Zip |
|-----|------------------|-----------------------|------------------------------|----------|-------|-------|
| 1 | 2121305120000080 | BICH DEV PARTNERS LLC | 1053 MAITLAND CENTER COMMONS | MAITLAND | FL | 32751 |

EXHIBIT A

**PARCEL 2130-21-512-0000-0080 (Western Parcel)
PROPERTY SKETCH SHOWING TAKING**

SKETCH OF DESCRIPTION



SHEET 1 OF 2

EXHIBIT B

**PURCHASE AGREEMENT
RECREATIONAL TRAIL EASEMENT**

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

THIS AGREEMENT is made and entered into this _____ day of _____, 2005, by and between BICH DEVELOPMENT PARTNERS, LLC., whose address is 1035 Maitland Center Commons Blvd., 2nd Floor, Maitland, FL 32751, hereinafter referred to as "OWNERS," and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, the COUNTY requires the hereinafter described property for a road project in Seminole County;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, OWNERS hereby agree to sell and COUNTY hereby agrees to buy the following property upon the following terms and conditions:

I. LEGAL DESCRIPTION

See, attached Exhibit A

Parcel I. D. Number: 21-21-30-512-0000-0080

II. PURCHASE PRICE

(a) OWNERS agree to sell and convey the above described property of the above referenced project by Permanent Recreational Trail Easement, free of liens and encumbrances, unto COUNTY for the sum of TWENTY-TWO THOUSAND AND NO/100 DOLLARS (\$22,000.00). The above amount includes all compensation due as a result of this acquisition to the OWNERS for any reason and for any account whatsoever.

(b) COUNTY shall be responsible for the following closing costs: recording fees for Recreational Trail Easement and Title Insurance Policy issued to the COUNTY by a title insurance company of the COUNTY's choice.

(c) OWNERS shall be responsible for OWNERS' own attorney's fees, cost to prepare and all expenses to record instruments necessary to provide title unto COUNTY, free and clear of all liens and encumbrances, and OWNERS' share of the pro-rata property taxes outstanding, up to and including the date of closing. The before mentioned closing costs and pro-rata real estate taxes shall be withheld by the COUNTY's closing agent from the proceeds of this sale and paid to the proper authority on behalf of the OWNERS.

(d) OWNERS covenant that there are no real estate commissions due any licensed real estate broker and further agrees to defend against and pay any valid claims made in regard to this purchase relating to covenants made herein by the OWNERS.

III. CONDITIONS

(a) COUNTY shall pay to the OWNERS the sum as described in Item II., above, upon the proper execution and delivery of all the instruments required to complete the above purchase and sale to the designated closing agent. The OWNERS agree to close within seven (7) days of notice by the COUNTY or the COUNTY's closing agent that a closing is ready to occur.

(b) OWNERS agree to vacate and surrender possession of the property upon the date of delivery of the instruments and closing of this Agreement. COUNTY may, but is not obligated to, extend possession of the property by OWNERS; provided, however, that such approval will be evidenced by a written document of equal dignity herewith. During the period from the date of the execution of this Agreement by both parties and the closing, OWNERS agree to exercise diligent care in protecting the property from theft and vandalism. All windows, doors, bathroom fixtures, electrical outlets, heaters and other similar items included in the purchase price, as well as the land itself, shall be preserved in normal conditions and turned over to the COUNTY by the OWNERS, intact, if applicable.

(c) Any and all encroachments existing upon the property, other than those improvements included in the purchase price, are to be removed by the OWNERS at the expense of the OWNERS prior to closing.

(d) OWNERS warrant that there are no facts known to OWNERS materially affecting the value of the properties which are not readily observable by COUNTY or which have not been disclosed to COUNTY.

(e) The instrument(s) of conveyance to be utilized at closing shall, in addition to containing all other common law covenants through the use of a Recreational Trail Easement, also include the covenant of further assurances.

(f) The OWNERS shall fully comply with *Section 286.23, Florida Statutes*, to the extent that said statute is applicable.

(g) In the event that COUNTY subsequently abandons this project after execution of this Agreement, but before closing, this Agreement shall be null and void.

(h) In the event that difficulties arise as to clearing title sufficient to consummate a closing of this Purchase Agreement or difficulties occur in the issuance of a title insurance commitment which is acceptable to the COUNTY; this Agreement shall survive the filing of any eminent domain action by the COUNTY and shall serve as a joint stipulation regarding all valuation issues and fees and costs matters in any condemnation proceeding initiated by the COUNTY relating to the real property herein described. The OWNER agree that, in accordance with any request made by the COUNTY, the OWNERS shall execute any and all instruments, pleadings, documents and agreements upon litigation reflecting the full settlement as set forth herein. The OWNERS agree not to oppose the COUNTY's condemnation proceedings in any way. The OWNERS, may however, assert OWNERS' rights against other claimants in apportionment proceedings.

(i) As part of the consideration for this Purchase Agreement, OWNERS hereby grant to COUNTY, its employees, agents, consulting engineers, contractors and other representatives the right to enter upon and to have exclusive possession of the property described in Exhibit A to this Agreement. The right of entry shall commence ninety (90) days after the execution of this Agreement by COUNTY, and shall continue until closing occurs, or if closing cannot occur, until the condemnation proceedings to acquire the property have been completed. Aside from this Agreement, no further notification of COUNTY's intent to enter the property is required. This right of entry is for the purpose of construction of the Kewannee Trail project and so that the COUNTY's construction schedule can be maintained notwithstanding issues which may delay closing in a timely manner. OWNERS will not receive from COUNTY any additional compensation beyond that set forth in this Purchase Agreement during the period of time the COUNTY occupies the above described property for the purpose set forth above for the right to enter and possess the property before conveyance of title.

(j) The COUNTY shall be solely responsible for all of COUNTY activities conducted on the property. OWNERS shall not be considered an agent or employee of COUNTY for any reason whatsoever on account of the Agreement. §375.251, *Florida Statutes*, shall apply to OWNERS as a further limitation on any liability on the part of the OWNERS.

(k) The OWNERS state that the OWNERS have not engaged in any action that would create a conflict of interest in the performance of OWNER's obligations under this Agreement with the COUNTY which would violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names on the date first above written.

WITNESSES:

Lorraine D. Wilson
WITNESS SIGNATURE

Lorraine D. Wilson

PRINT NAME

D Kyslowsky
WITNESS SIGNATURE

D Kyslowsky
PRINT NAME

By: [Signature]
PEDRO BENEVIDES, Manager

Address:
219 S. Orange Blossom Trail
Orlando, FL 32805

WITNESSES:

Lorraine D. Wilson
WITNESS SIGNATURE
Lorraine D. Wilson

PRINT NAME

D Kyslowsky
WITNESS SIGNATURE

D Kyslowsky
PRINT NAME

By: [Signature]
LOUIS HERNANDEZ, Manager

Address:
1430 Glenwick Drive
Windermere, FL 34767

WITNESSES:

D Kyslowsky
WITNESS SIGNATURE

D Kyslowsky
PRINT NAME

Amie M. Ceboltero
WITNESS SIGNATURE

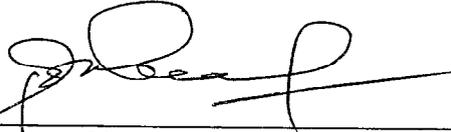
Amie M. CEBOLTERO
PRINT NAME

By: [Signature]
BERRY J. WALKER, JR., Manager

Address:
1035 Maitland Center Commons Blvd., 2nd Floor
Maitland, FL 32751

WITNESSES:


WITNESS SIGNATURE
Lorraine D. Wilson

By: 
I. C. Bhavsar, Manager

PRINT NAME


WITNESS SIGNATURE


PRINT NAME

Address:
6167 Harbourtown Court
Orlando, FL 32819

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

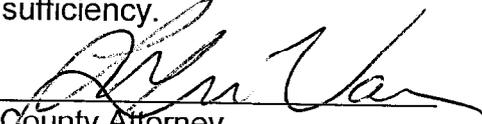
MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
CARLTON D. HENLEY, Chairman

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency.

As authorized for execution by the Board of
County Commissioners at its _____,
2005, regular meeting.


County Attorney

LV/kc
11/30/04

SKETCH OF DESCRIPTION

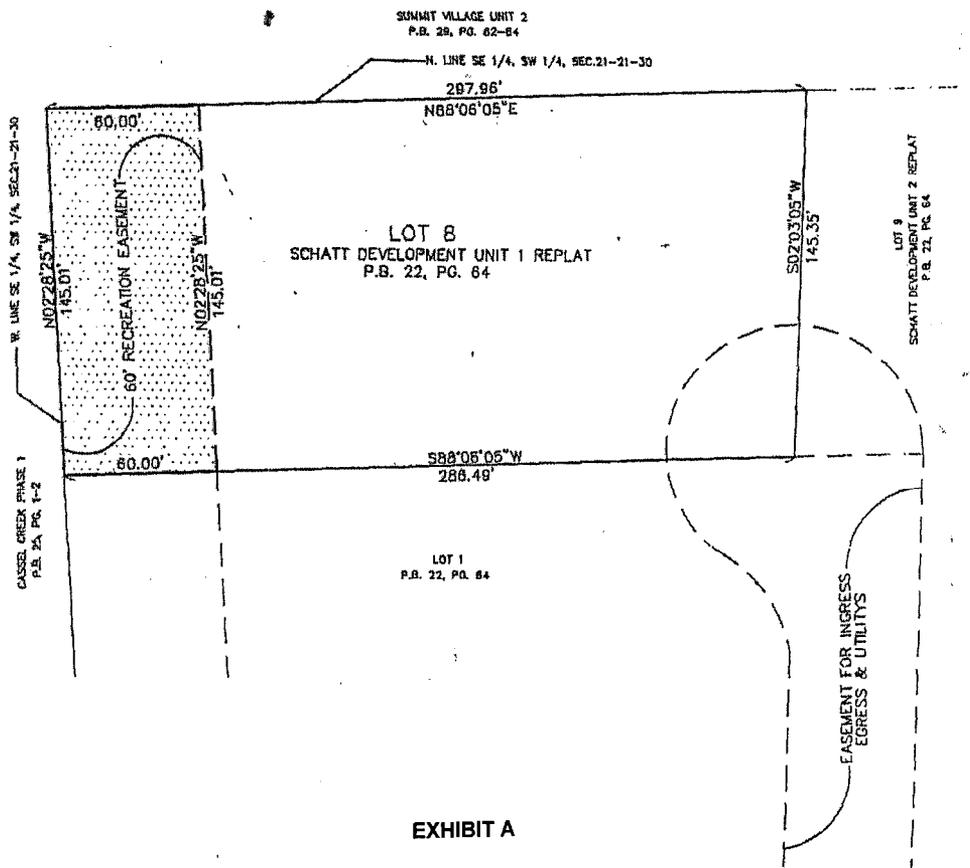


EXHIBIT A

SHEET 1 OF 2

SEMINOLE COUNTY

ENGINEERING DEPARTMENT
SURVEY SECTION
520 W. LAKE MARY BLVD.
SANFORD, FLORIDA 32773
(407)665-5647

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

BY:

GARY A. LEISE P.L.S. FLA. CERT.# 4723

LEGEND

| | |
|--------------------------------|----------------------------------|
| △ CENTRAL ANGLE (DELTA) | PB - PLAT BOOK |
| R - RADIUS | PG - PAGE (S) |
| CB - CHORD BEARING | ORB - OFFICIAL RECORDS BOOK |
| L - ARC LENGTH | SEC - SECTION - TOWNSHIP - RANGE |
| C - CHORD | PCL - PARCEL |
| ○ SET IRON PIN OR PIPE | PC - POINT OF CURVATURE |
| ● FOUND IRON PIN OR PIPE | PT - POINT OF TANGENCY |
| □ SET CONCRETE MONUMENT | PI - POINT OF INTERSECTION |
| ■ FOUND CONCRETE MONUMENT | POC - POINT OF COMPOUND CURVE |
| P.D.B. - POINT OF BEGINNING | PRC - POINT OF REVERSE CURVE |
| P.O.C. - POINT OF COMMENCEMENT | M - MEASURED |
| P.O.T. - POINT OF TERMINATION | P - PLAT |
| R/W - RIGHT OF WAY | F - FIELD |
| D - DEED | C - CALCULATED |
| C/L - CENTERLINE | P/L - PROPERTY LINE |
| UTIL - UTILITY | ESMT - EASEMENT |

FIELD DATE: N/A

DATE: 03-21-02

JOB NAME: 02-007A

SCALE: 1" = 50'

DRAWN BY: L.W.

CHECKED BY:

LEGAL DESCRIPTION

RECREATIONAL TRAIL EASEMENT

THE WEST 60.00 FEET OF LOT 8 AS AS RECORDED IN PLAT BOOK 22, PAGE 64, OF THE PUBLIC RECORDS, SEMINOLE COUNTY, FLORIDA.
(A REPLAT OF LOT 1, UNIT 1, AND LOT 7, UNIT 2 OF SCHATT DEVELOPMENT.)

CONTAINING 8701 SQUARE FEET MORE OR LESS.

8700 sq ft
@ #2

SHEET 2 OF 2

SEMINOLE COUNTY

ENGINEERING DEPARTMENT
SURVEY SECTION
520 W. LAKE MARY BLVD.
SANFORD, FLORIDA 32773
(407)665-5647

LEGEND

BEARINGS BASED ON : NORTH LINE OF SCHATT DEVELOPMENT
UNIT ONE AS BEING N66°06'55"E

SURVEYOR'S NOTES

1. THIS IS NOT A SURVEY.
2. UNDERGROUND UTILITIES AND/OR IMPROVEMENTS NOT LOCATED.
3. SURVEYOR HAS NOT ABSTRACTED THE LAND SHOWN HEREON, THE ABOVE REFERENCED PROPERTY MAY BE SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD, IF ANY.

| REVISIONS | | | |
|-----------|-------------|----|--|
| DATE | DESCRIPTION | BY | |
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |

| | |
|-------------------|----------------|
| FIELD DATE: N/A | SCALE: 1"=50' |
| DATE: 03-21-02 | DRAWN BY: L.W. |
| JOB NAME: 02-007A | CHECKED BY: |